

**IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH
NEW DELHI
(Court No.2)**

**T.A NO. 661 of 2009
WP(C) No.7200 of 2009 of Delhi High Court**

IN THE MATTER OF:

Sub Bishan Singh**APPLICANT**
Through : Ms. R. Archana, counsel for the applicant

Vs.

UNION OF INDIA AND OTHERS ...**RESPONDENTS**
Through: Dr. Ashwini Bhardwaj counsel for the respondents

CORAM:

**HON'BLE MR. JUSTICE MANAK MOHTA, JUDICIAL MEMBER
HON'BLE LT. GEN. M.L. NAIDU, ADMINISTRATIVE MEMBER**

JUDGMENT

Date: 13.03.2012

1. This petition was originally filed on 24.02.2009 before the Hon'ble High Court of Delhi as WP(C) No.7200 of 2009. Thereafter, it was transferred to the Armed Forces Tribunal on 11.12.2009 and was registered as TA No.661/2009.

2. Vide this petition, the applicant has sought quashing and setting aside of discharge order dated 29.11.2004 made effective from 01.06.2005 (Annexure P-1) being passed on LMC ground, alleged to be contrary to the principles of law as laid down in the Hon'ble Delhi High Court Judgment given in the case of **Sub (Skt) Puttan Lal & other connected petitioners on 20.11.2008** passed in a bunch of petitions (Annexure P-3). He has also sought grant of pay and

allowances, ration money, CILQ, CEA and all other allowances as are legally entitled for the interim period from 01.06.2005 till 31.01.2007 (deemed date of normal retirement).

3. Brief facts of the case are that the applicant was enrolled in the Indian Army on 05.01.1979. During his service he was promoted to the rank of Subedar. As a Subedar his date of superannuation would have been 31.01.2007. However, he was prematurely discharged on medical grounds on 31.05.2005 since he was Low Medical Category P-2(P) but without holding Invalidation Medical Board, violative of Army Rule 13. It was contended that the said discharge order was illegal, therefore, it is continuing wrong and the order is liable to be quashed. He also cited the judgment given in case of ***Union of India Vs. Tarsem Singh*** given in (2008) 8 SCC 648.

4. Learned counsel for the applicant stated that the applicant was LMC P-2 for two years from 16.07.2004 to 16.07.2006 and he was discharged before his review could take place on 31.05.2005 while he was still in the colour service of 28 years in the rank of Subedar. The applicant is already in receipt of pension as well as disability pension.

5. Learned counsel for the respondents submitted that the application could not be entertained on account of delay and laches alone. The applicant was discharged on 31.05.2005 and has filed this petition in the year 2009. He further submitted that the applicant has

not exhausted all his departmental remedies and thus the application need not be proceeded on merit.

6. Learned counsel for the respondents further argued that the applicant is seeking his relief based on the judgment of Hon'ble High Court of Delhi in the matter of **Sub (Skt) Puttan Lal & other connected petitioners on 20.11.2008** passed in a bunch of petitions, but facts of which are not similar to the present case as that case pertains to persons discharged in pursuance of policy dated 12.04.2007 wherein the present applicant had been discharged much prior to the issuance of said policy letter. Further, there was no litigation pending from the side of applicant at the time of verdict given in Puttan Lal's case (Supra), therefore, as per directions given in the said judgment, the applicant is not entitled for any relief.

7. Learned counsel for the respondents also submitted that the applicant joined the Indian Army on 05.01.1979. While serving with 195 Field Regiment was down graded to medical category CEE(T) for six months from 16.7.1999 due to diagnosis "IHQ (INFERIOR WALL MI)" and on review was downgraded to low medical category BEE(P) for two years from 16.07.2000 to 16.07.2002. On subsequent review he was down graded to low medical category P-2(P) E-1 with effect from 16.7.2002 till discharge from service from 31.05.2005.

8. Learned counsel for the respondents further argued that as per management policy of permanent LMC personnel in the Army, a policy

letter was issued on 23.07.2002 where all permanent LMC personnel except battle casualties and war wounded cases are to be discharged from service in conjunction with Army Order 46 of 1980.

9. Learned counsel for the respondent further submitted that the Hon'ble High Court in Puttan Lal's case (Supra) has laid down certain restrictions as per para 7(iv) of the said judgment which is as under:-

“the general directions are applicable only to such of the persons who have been discharged or proposed to be discharged under the policy letter dated 12.04.2007 or those who may have been discharged earlier but have already approached the Competent Court by filing a petition.”

10. Learned counsel for the respondents further cited the judgment of **Hon'ble** High Court of Judicature at Allahabad in **CWP No.5760/2009 Rajeswar Singh Vs UOI and others** decided on 08.09.2009 in the similarly situated case dismissed the writ petition on the grounds of delay and laches (Annexure R-4). In **Rajeshwar Singh's** case (Supra), the Hon'ble Allahabad High Court has stated as under: -

“As stated earlier, the petitioner was discharged from service on 31.03.2003 and he had chosen to file the writ application in January, 2009. The only explanation put forth by the writ petitioner-appellant is that after the judgment of the Delhi High Court, he came to know that his discharge is illegal and therefore, the delay has sufficiently been explained. In our opinion, mere judgment of the Delhi High Court later on itself

shall not give right to the writ petitioner-appellant to approach the Court belatedly. The learned Single Judge has referred to the judgment of the Delhi High Court as affirmed by the Supreme Court and has held that the writ petitioner-appellant is not entitled for the relief and the writ petition suffers from delay and laches.”

11. Learned counsel for the respondents also contended that in similarly situated cases, where the concerned petitioners were discharged prior to the **Puttan Lal's** judgment and they have not filed petition earlier in their cases, the relief of reinstatement was not entertained. In support of his contention he cited the decisions given by the Principal Bench of this Tribunal in cases of **Risaldar Ram Karan Singh Vs. Union of India** decided on 21.09.2011 in T.A. No.229/2009, **Rifleman Ram Bahadur Thapa Vs. Union of India & Ors.** in O.A. No.176/2011 decided on 19.10.2011 and **Nk. Narendra Kumar Vs. Union of India & Ors.** in O.A. No.262/2010 decided on 08.11.2010.

12. Learned counsel for the respondents also submitted that the applicant was discharged on 31.05.2005 and that was a complete act and he has not raised the issue in time, therefore, it cannot be said to be a continuous wrong. He contended that, thus, on the basis of continuing wrong he is not entitled for any relief.

13. We have considered the rival contentions raised by learned counsel for the parties and perused and studies the record along with the judgment cited by learned counsel for the parties. In this case,

admittedly, the applicant was discharged on 31.05.2005 on the ground of LMC P-2, but at that time, he has not filed any petition before the Court. After the passing of **Puttan Lal's** judgment he approached the Court on 24.02.2009 as the act of discharge was a complete act, it cannot be said to be a continuous wrong, therefore, the contention of the applicant, that delay is not coming in his way, is not sustainable. He has also cited the judgment given in case of **Tarsem Singh** (supra), but that case pertains to pension matter. In this case, without quashing the order of discharge the applicant is not entitled for anything and for that purpose the cause of action arose when he was discharged. This contention also came before the Hon'ble Delhi High Court in case of **Rifleman Ram Bahadur Thapa vs. Union of India & Ors.** W.P.(C) No.586/2012 decided on 30.01.2012, wherein the petitioner, who was discharged on 01.01.2007 filed a writ petition in the year 2011. A contention was raised of continuing wrong by the petitioner, but it was not accepted by the Hon'ble High Court and in that judgment the decision of **Tarsem Singh** (supra) was held to be apparently distinguishable. The Hon'ble Court, in this respect, observed as under:

“16. Therefore, it cannot be held that the defense of laches will not be applicable for the claim that the petitioner could not be boarded out without holding an Invalidation Medical Board. The case of Tarsem Singh (supra) is apparently distinguishable and the petitioner cannot place reliance on the same to claim his relief.”

14. This conclusion also finds support from the view taken by this Tribunal in case of ***ERA Rakesh Kumar Aggarwal Vs. Union of India & Ors.*** passed in O.A. No.55/2012 decided on 17.02.2012, wherein the Tribunal has discussed the provision of Section 22 of the Armed Forces Tribunal Act, 2007.

15. We have also considered the other contentions raised by learned counsel for the applicant. The applicant was discharged on 31.05.2005 as LMC case. This case is guided by the observation made in ***Puttan Lal's*** judgment. In that judgment in para 7(iv) it has been held that those persons who have been discharged earlier and approached the competent Court will be benefited only. But the applicant had neither been discharged under the policy of 12.04.2007 nor he had filed any petition in any Court. Thus, as per ***Puttan Lal's*** judgment the applicant is not entitled for any relief. Para 7(iv) of ***Puttan Lal's*** judgment is reproduced hereunder for ready reference:

“7.(iv) The general directions are applicable only to such the persons who have been discharged or proposed to be discharged under the policy letter dated 12.04.2007 or those who may have been discharged earlier but have already approached the competent court by filing a petition.”

16. On the similar facts, in cases referred above of ***Risaldar Ram Karan Singh*** (supra), ***Ram Bahadur Thapa*** (supra) and ***Nk. Narendra Kumar*** (supra), the same view was taken by this Tribunal, and the decisions taken in ***Risaldar Ram Karan Singh*** (supra) and ***Ram Bahadur Thapa*** (supra) were also maintained by the Hon'ble Delhi High Court.

17. In view of the aforesaid judgments and discussion, we are of the opinion that para 7(iv) of the Puttan Lal's judgment (Supra) is explicit in excluding all petitioners who had not filed a case in any court of law on the date the said judgment was pronounced i.e. 20.11.2008. The similar view has been taken in other aforesaid cases. The present T.A. is devoid of any merit and is liable to be dismissed.

18. In view of the foregoing, we do not find any merit in the case. The case is dismissed. No orders as to costs.

(M.L. NAIDU)
(Administrative Member)

(MANAK MOHTA)
(Judicial Member)

**Announced in the open Court
on this 13th day of March, 2012.**